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CASE NUMBER 1:04CV01398

JUDGE: Rosemary M. Collyer

DECK TYPE: Antitrust

DATE STAMP: 08/17/2004

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PLAINTIFFS,

v.

PERRIGO COMPANY  
515 Eastern Avenue  
Allegan, Michigan 49010

and

ALPHARMA, INC.  
One Executive Drive  
Fort Lee, New Jersey 07024

DEFENDANTS.

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**COMPLAINT**

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The states of Maryland, Colorado, Ohio, Florida, Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming, the commonwealths of Kentucky, Massachusetts, the Northern Mariana Islands, Pennsylvania, and Virginia, the District of Columbia, and the Territory of the United States Virgin Islands, by their Attorneys General; the State of Montana, by its Consumer Protection Office; and the Commonwealth of Puerto Rico, by its Secretary of Justice; (the "Plaintiff States" or "States"), bring this action against Defendants Perrigo Company ("Perrigo") and Alpharma, Inc. ("Alpharma") and make the following allegations:

### SUMMARY OF COMPLAINT

1. Perrigo and Alpharma entered into an anticompetitive agreement that destroyed competition in the market for over-the-counter ("OTC") generic versions of Children's Motrin® in the United States.

2. Perrigo is the largest manufacturer in the United States of OTC pharmaceutical and nutritional products for the store brand and contract manufacturing markets.

3. Alpharma is the largest manufacturer in the United States of generic liquid and topical pharmaceuticals.

4. McNeil Consumer & Specialty Pharmaceuticals ("McNeil"), a division of McNeil-PPC, Inc. (in the Johnson & Johnson family of companies), markets OTC and prescription pharmaceuticals including Motrin® products for children and adults.

5. Children's Motrin Suspension Liquid ("Children's Motrin") is a pharmaceutical product, marketed by McNeil, containing ibuprofen suspended in a palatable liquid. Children's Motrin is an anti-inflammatory drug that can be given to children over two years old to reduce fever and relieve mild or moderate pain.

6. Perrigo and Alpharma are the only companies that have filed applications to manufacture generic versions of Children's Motrin.

7. On June 16, 1998, Perrigo and Alpharma entered into an agreement (the "Agreement") to illegally restrain competition and allocate the market for OTC generic versions of Children's Motrin.

8. The Agreement raised costs in the market for OTC generic Children's Motrin.

9. The Agreement forced Plaintiff States and other persons to pay artificially inflated prices for OTC generic Children's Motrin.

10. The States request a finding that Perrigo and Alpharma violated state and federal antitrust and related laws, a permanent injunction barring Perrigo and Alpharma from engaging in similar conduct in the future, other equitable relief, civil penalties, and/or other relief for injuries caused by the illegal Agreement.

#### **JURISDICTION AND VENUE**

11. This Court has jurisdiction pursuant to Section 1 of the Sherman Act, 15 U.S.C. § 1 and Section 16 of the Clayton Act, 15 U.S.C. § 26, and 28 U.S.C. §§ 1331 and 1337. In addition to pleading violations of federal antitrust law, the States also allege violations of state antitrust, consumer protection and/or unfair competition statutes and related state laws. The States seek civil penalties and/or equitable relief under those state laws.

12. All claims under federal and state law are based upon a common nucleus of operative fact, and the entire action commenced by this Complaint constitutes a single case that would ordinarily be tried in one judicial proceeding.

13. This Court has jurisdiction of state law claims under 28 U.S.C. §1367(a), as well as under the principles of supplemental jurisdiction. Supplemental jurisdiction will avoid unnecessary duplication and multiplicity of actions and should be exercised in the interests of judicial economy, convenience, and fairness.

14. Venue is proper in this Court under Section 12 of the Clayton Act, 15 U.S.C. § 22 and under 28 U.S.C. §§ 1391(b) and (c), because: (i) Perrigo and Alpharma transact business and are found within this district; and (ii) a substantial portion of the affected trade and commerce described below has been carried out in this district.

## **PARTIES**

15. Defendant Perrigo is a Michigan corporation with its principal place of business at 515 Eastern Avenue, Allegan, Michigan, 49010. Perrigo manufactures and distributes generic OTC drugs. Many of these drugs are sold by supermarket, drug and big box stores under their own store brand or private labels. For the fiscal year ending June 28, 2003, Perrigo reported net sales of approximately \$826 million. During that same period, Perrigo reported approximately \$17.4 million in net sales of generic Children's Motrin.

16. Defendant Alparma is a Delaware corporation with its principal place of business at One Executive Drive, Fort Lee, New Jersey, 07024. Alparma, through its U.S. Human Pharmaceuticals Division ("USHP"), manufactures and distributes generic prescription and OTC drugs. For the full year 2003, Alparma reported net revenues of approximately \$1.297 billion.

17. The Plaintiff States bring this action 1) in their proprietary and/or sovereign capacities, which may include state departments, agencies, political subdivisions, and other instrumentalities as purchasers (either directly, indirectly, or as assignees); and 2) as a civil law enforcement action.

## **FACTUAL BACKGROUND**

### **A. New Drug Applications**

18. A drug manufacturer must obtain approval from the U.S. Food and Drug Administration ("FDA") before the manufacturer may lawfully introduce a new drug in the United States.

19. To have one of its new drugs considered for approval, a manufacturer must file a New Drug Application ("NDA") with the FDA. The NDA must contain information demonstrating that the drug is safe and effective for its intended use.

20. A drug that is approved through the NDA application process may be listed by the FDA as a "Reference Listed Drug" in the FDA's publication entitled "Approved Drug Products with Therapeutic Equivalence Evaluations," which is commonly referred to as the "Orange Book."

21. The FDA grants a three-year period of market exclusivity to a drug product that contains an active moiety that has been previously approved, when the application contains reports of new clinical investigations (other than bioavailability studies) conducted or sponsored by the sponsor that were essential to approval of the application.

**B. Patents**

22. A specific drug may be protected by one or more patents. The assignee of a patent has the right to exclude others from making, using, or selling the invention claimed in the patent.

23. An NDA applicant must provide the FDA with the patent number and the expiration date of any patent that claims the drug for which the applicant submitted the application, or which claims a method of using the drug, where a claim of patent infringement could reasonably be asserted against an unauthorized manufacturer, user, or seller of the drug. Upon FDA approval of the application, all patents identified by the NDA recipient are listed in the Orange Book as relating to that drug.

**C. Generic Drugs**

24. Generic drugs are similar to, but not necessarily identical to, Reference Listed Drugs. A generic drug contains the same active pharmaceutical ingredient(s) (or contains the same therapeutic moiety, but may be a different salt, ester, or complex of that moiety) as the corresponding Reference Listed Drug, but may contain other ingredients (such as colors and flavors) that are different. A generic drug is comparable to a Reference Listed Drug in dosage

form, strength, route of administration, quality, performance characteristics and intended use. A generic drug must be bioequivalent to the corresponding Reference Listed Drug.

25. The Drug Price Competition and Patent Term Restoration Act of 1984, 21 U.S.C. § 355, (the "Hatch-Waxman Act") established a procedure that has often allowed generic drugs to enter the market earlier than had been possible in the past. The Hatch-Waxman Act allows a company to seek FDA approval to market a generic version of a Reference Listed Drug by filing an Abbreviated New Drug Application ("ANDA"). An ANDA is generally not required to include preclinical (animal) and clinical (human) data to establish safety and effectiveness.

26. Because the FDA has already determined that a Reference Listed Drug is safe and effective for use, an ANDA filer may rely on the safety and efficacy data previously provided for a specific Reference Listed Drug, so long as the ANDA filer sufficiently demonstrates to the FDA that its generic drug is bioequivalent to the Reference Listed Drug.

27. Generic versions of Reference Listed Drugs are usually sold at prices substantially below the prices charged for the Reference Listed Drugs. Plaintiff States and other persons save significant amounts of money by purchasing generic drugs.

28. An ANDA filer must include in its ANDA one of four different "certifications" for each patent listed for the Reference Listed Drug in the Orange Book. The four possible certifications are: (i) no patent for the Reference Listed Drug has been filed in the Orange Book ("Paragraph I Certification"), (ii) a patent listed in the Orange Book for the Reference Listed Drug has expired ("Paragraph II Certification"), (iii) the ANDA filer will not seek to market its generic product before the earliest date that a patent listed in the Orange Book for the Reference Listed Drug will actually expire ("Paragraph III Certification"), or (iv) a patent listed in the

Orange Book for the Reference Listed Drug is invalid or will not be infringed by the generic company's product ("Paragraph IV Certification").

29. If an ANDA filer makes a Paragraph IV Certification regarding any patent listed for the Reference Listed Drug, the patent assignee has a 45-day window to file a lawsuit alleging that the ANDA filer is infringing the listed patent.

30. If such an infringement suit is filed during the 45-day window, the FDA is automatically prohibited from granting final approval of the ANDA for a period of 30 months, or until there is a final decision in the patent case finding the patent either invalid or not infringed, whichever occurs first.

31. If the patent holder does not file an infringement suit against the ANDA filer within the 45-day period, then the FDA approval process for the ANDA may proceed. Upon receiving final FDA approval, the ANDA filer may begin marketing its generic version of the Reference Listed Drug.

32. The first ANDA filer for the generic version of a Reference Listed Drug is known as the "First Filer." The First Filer who makes a Paragraph IV Certification regarding any patent listed for the Reference Listed Drug is awarded a 180-day period of exclusivity from the FDA. Until that period expires, the FDA may not give final approval to any other ANDA filer seeking to market its own version of the same Reference Listed Drug.

33. The 180-day exclusivity period begins on the date the FDA receives notice from the First Filer that commercial marketing of the drug product approved in that application was initiated.

34. The FDA may grant "tentative approval" to an ANDA filer whose application is in a condition such that final approval could be granted, except that patents and/or exclusivity periods

prevent final approval until a later date. A tentative approval does not allow the applicant to market the generic drug product.

**D. McNeil's Children's Motrin Suspension Liquid**

35. On December 20, 1994, the U.S. Patent and Trademark Office ("USPTO") issued U.S. Patent No. 5,374,659 (the "'659 patent") to McNeil. The '659 patent claims certain aqueous ibuprofen pharmaceutical suspension compositions. The '659 patent expires on December 20, 2011.

36. McNeil requested that the FDA include the '659 patent in the Orange Book as a part of its NDA listings for Children's Motrin.

37. The FDA granted a three-year period of exclusivity to McNeil for its OTC Children's Motrin product. That period was originally scheduled to expire on June 16, 1998.

38. The FDA extended McNeil's exclusivity period for its OTC Children's Motrin product for an additional six months as a result of McNeil's pediatric testing of the product. That period expired on December 16, 1998.

**E. Alpharma's Children's Oral Suspension Ibuprofen**

39. On June 25, 1996, Alpharma filed an ANDA with the FDA ("ANDA 74-916"), and became the First Filer for an OTC generic version of Children's Motrin.

40. ANDA 74-916 contained a Paragraph IV Certification regarding the '659 patent.

41. No action for patent infringement was brought against Alpharma as a result of its Paragraph IV Certification in ANDA 74-916 regarding the '659 patent.

42. On October 9, 1996, Alpharma filed an ANDA with the FDA ("ANDA 74-978"), and became the First Filer for a prescription generic version of Children's Motrin.

43. ANDA 74-978 contained a Paragraph IV Certification regarding the '659 patent.



44. No action for patent infringement was brought against Alpharma as a result of its Paragraph IV Certification in ANDA 74-978 regarding the '659 patent.

45. On January 9, 1998, the FDA tentatively approved ANDA 74-916. After submitting a final amendment and receiving final FDA approval (following the expiration of McNeil's exclusivity period), Alpharma would be able to begin marketing its OTC generic version of Children's Motrin.

46. After receiving tentative approval, Alpharma began soliciting customers for its OTC product.

47. Alpharma made plans to launch its OTC generic version of Children's Motrin in June 1998.

48. In February 1998, the FDA tentatively approved ANDA 74-978. After submitting a final amendment and receiving final FDA approval (following the expiration of McNeil's exclusivity period), Alpharma would be able to begin marketing its prescription generic version of Children's Motrin.

49. The FDA granted final approval of Alpharma's ANDA 74-978 on March 25, 1998.

50. Alpharma began distributing its prescription generic version of Children's Motrin after receiving approval.

51. The FDA granted final approval of Alpharma's ANDA 74-916 on April 30, 1999.

52. Alpharma did not begin distribution of its OTC generic version of Children's Motrin as a result of its Agreement with Perrigo to divide the market.

**F. Perrigo's Children's Oral Suspension Ibuprofen**

53. On July 26, 1996, Perrigo filed an ANDA with the FDA ("ANDA 74-937") for an OTC generic version of Children's Motrin.

54. ANDA 74-937 contained a Paragraph IV Certification regarding the '659 patent.

55. No action for patent infringement was brought against Perrigo as a result of its Paragraph IV Certification in ANDA 74-937 regarding the '659 patent.

56. On September 5, 1997, the FDA tentatively approved ANDA 74-937. After submitting a final amendment and receiving final FDA approval (following the expiration of McNeil's exclusivity period), Perrigo would be able to begin marketing its OTC generic version of Children's Motrin.

57. After receiving tentative approval, Perrigo began soliciting customers for its store brand product and set a launch date of June 1998. Perrigo was successful in obtaining commitments from many of its customers to purchase OTC generic Children's Motrin.

58. On June 16, 1998, Perrigo learned that McNeil had obtained an additional six months of exclusivity, and that Perrigo could not obtain final approval of its ANDA until expiration of McNeil's extended exclusivity period on December 16, 1998.

59. The FDA granted final approval of Perrigo's ANDA 74-937 on December 22, 1998.

60. Perrigo began distribution of its OTC generic version of Children's Motrin shortly after receiving final approval of ANDA 74-937.

**G. Perrigo and Alharma's Unlawful Acts**

61. In early 1998, Perrigo and Alharma competed vigorously for potential customers of OTC generic Children's Motrin products.

62. Alharma eventually realized that Perrigo was winning the pre-launch battle for market share. Alharma responded to the competitive threat by lowering its asking price for OTC generic Children's Motrin by as much as 20% in an effort to secure customers who had not yet agreed to purchase the product from any source.

63. Perrigo reacted to Alpharma's price reductions by lowering its own prices to win new customers or retain previous customer commitments.

64. Customers were aware that Perrigo and Alpharma were competing for business in the market for OTC generic Children's Motrin, and used that competition to obtain lower prices. As an example, one large purchaser was able to obtain a 40% discount for its initial purchase of OTC generic Children's Motrin from Perrigo.

65. In April 1998, Perrigo learned from the FDA that Perrigo's product could not receive final approval until after the expiration of a 180-day exclusivity period that had been awarded to the First Filer.

66. Perrigo believed that any delay in launching its product would disappoint its customers and could adversely affect Perrigo's reputation.

67. Perrigo's management believed that Alpharma was the First Filer. On or about May 20, 1998, a senior executive of Perrigo approached a senior executive of Alpharma with a suggestion that the companies enter into a mutual agreement regarding the marketing of OTC generic Children's Motrin during the First Filer's 180-day exclusivity period.

68. Alpharma indicated to Perrigo that Alpharma would only be interested in entering into an agreement with a longer duration that would include a large up-front payment, and that would provide a continuing royalty stream.

69. Perrigo knew that a long-term agreement would be in its best interests, so long as Alpharma was not competing against Perrigo for customers of OTC generic Children's Motrin.

70. On June 16, 1998, Perrigo and Alpharma entered into the anticompetitive seven-year Agreement that divided the market for generic versions of Children's Motrin product. The Agreement allocated the entire market for OTC generic Children's Motrin to Perrigo.

71. The duration of the Agreement was not in any way related to the duration of any exclusivity or patent protection that had been obtained by Alparma.

72. In exchange for Alparma's promise not to compete, Perrigo made an initial payment of \$3.5 million to Alparma and agreed to make royalty payments to Alparma for the duration of the Agreement.

73. Through the Agreement, Alparma agreed to give Perrigo an exclusive right to market, distribute, and sell Alparma's generic version of OTC Children's Motrin. Perrigo and Alparma agreed that Alparma would retain the right to manufacture, market, distribute, and sell a prescription generic version of Children's Motrin.

74. Alparma agreed that it would not begin marketing, selling, or distributing any other OTC ibuprofen oral suspension product for pediatric use, whether patented or not, without first giving Perrigo an opportunity to enter into another agreement to jointly pursue the opportunity with Alparma, and thereby further restrain trade and destroy competition.

75. Perrigo and Alparma knew that Perrigo was paying a large amount of money in exchange for Alparma's promise not to compete in the OTC market for generic Children's Motrin.

76. The Agreement provided that Perrigo's per-bottle royalty payment to Alparma would cease upon final FDA approval of any other party's application for a generic version of Children's Motrin. However, such approval would not end Perrigo's continuing obligation to pay Alparma a royalty calculated as a percentage of Perrigo's net sales of OTC generic Children's Motrin.

77. At the time that the Agreement was signed, Perrigo and Alparma both had expectations that Alparma would receive final approval of ANDA 74-916 no later than August 1998.

78. Shortly after entering into the Agreement, Perrigo and Alparma learned that the FDA had granted McNeil's request for an additional six-month exclusivity period for pediatric testing. Accordingly, neither company's ANDA could receive final approval until December 18, 1998.

79. On December 14, 1998, Perrigo and Alparma amended their agreement because of the exclusivity extension, extending certain dates by six months.

80. Perrigo and Alparma further modified the Agreement on December 17, 1998. Alparma sent a letter to the FDA relinquishing Alparma's 180-day exclusivity. This allowed Perrigo to enter the market upon the expiration of McNeil's exclusivity and the final approval of Perrigo's ANDA.

81. Perrigo became the only company marketing OTC generic Children's Motrin shortly after receiving final approval on December 22, 1998. As required by the Agreement, Perrigo paid Alparma \$3.5 million in exchange for Alparma's agreement not to compete.

82. In the absence of the competitive threat that Alparma would have provided in a free marketplace, Perrigo began charging its customers higher prices for OTC generic Children's Motrin soon after entering the market as the sole supplier.

83. Alparma received final approval of ANDA 74-916 in April 1999. Pursuant to the terms of its agreement with Perrigo, Alparma did not enter the market, thereby destroying the competition that is intrinsic to our market based economy.

84. At all times since executing their June 1998 Agreement, Perrigo and Alpharma have been the only two companies with FDA approval for generic versions of Children's Motrin.

85. In May 2004, after being notified that the situation was being investigated by state and federal authorities, Perrigo and Alpharma rescinded their anticompetitive agreement.

#### **TRADE AND COMMERCE**

86. During the relevant period, OTC generic Children's Motrin was sold throughout the United States. OTC generic Children's Motrin was transported across state lines and sold in each of the Plaintiff States. Perrigo's unlawful activities alleged in this Complaint have occurred in and have had a substantial effect upon interstate commerce.

#### **RELEVANT MARKET**

87. The relevant product market is the manufacture and sale of OTC generic Children's Motrin.

88. The relevant geographic antitrust market is the United States, including all commonwealths, territories and protectorates.

89. At all relevant times, Perrigo has maintained 100% of the market for OTC generic Children's Motrin.

#### **ANTICOMPETITIVE EFFECTS OF DEFENDANTS' ILLEGAL CONDUCT**

90. Perrigo and Alpharma's agreement not to compete was a naked restraint of trade with no purpose except stifling of competition.

91. Even under a broader inquiry, the agreement is anticompetitive.

92. Perrigo and Alpharma's conduct had the purpose and effect of unreasonably and illegally restraining trade and preventing competition between products in the relevant market.

93. Perrigo and Alpharma's agreement to eliminate competition is not reasonably necessary to accomplish any procompetitive objective. The agreement was not subsidiary to any procompetitive objective. Eliminating competition from Alpharma was a primary purpose of Perrigo's unlawful agreement with Alpharma.

94. As a direct and proximate result of the illegal conduct alleged above, the Plaintiff States and other persons would have been able to purchase OTC generic Children's Motrin at lower prices.

95. By allocating the market, Perrigo and Alpharma deprived Plaintiff States of the benefits of competition that the federal and state antitrust laws, consumer protection laws and/or unfair competition statutes and related state laws are designed to promote, preserve, and protect.

96. As a direct and proximate result of the unlawful conduct alleged above, Perrigo has unjustly profited from its illegally obtained 100% share of the market for OTC generic Children's Motrin.

97. As a direct and proximate result of the unlawful conduct alleged above, Alpharma has unjustly profited from the Agreement with Perrigo.

#### **CONSPIRACY IN VIOLATION OF SECTION 1 OF THE SHERMAN ACT**

98. On June 16, 1998, Perrigo and Alpharma signed an Agreement that allocated to Perrigo 100% of the market for OTC generic Children's Motrin, the purpose and effect of which was to restrain trade and eliminate competition in the relevant market and to allocate the relevant market between them in violation of Section 1 of the Sherman Act, 15 U.S.C. §1.

99. In the absence of Perrigo and Alpharma's antitrust violations, Alpharma would have entered the market with OTC generic Children's Motrin.

100. As a result of Perrigo and Alparma's antitrust violations, Plaintiff States and persons within those states spent significantly more for the purchase of generic Children's Motrin than they would have in the absence of antitrust violations.

#### **SUPPLEMENTAL STATE LAW CLAIMS**

101. Plaintiff State of Alabama repeats and realleges each and every allegation contained in paragraphs 1 through 100.

102. Defendants' acts violate, and Plaintiff State of Alabama is entitled to relief under, the Deceptive Trade Practices Act, Section 8-19-1, et seq., Code of Alabama 1975. Section 8-19-11, Code of Alabama 1975 provides for civil penalties and reasonable attorney fees.

103. Plaintiff State of Alaska repeats and realleges each and every allegation contained in paragraphs 1 through 100.

104. Defendants' acts violate, and Plaintiff State of Alaska is entitled to relief under, AS 45.50.471 and AS 45.50.562 - .596.

105. Plaintiff State of Arizona repeats and realleges each and every allegation contained in paragraphs 1 through 100.

106. Defendants' acts violate, and Plaintiff State of Arizona is entitled to relief under, Arizona Uniform State Antitrust Act, Arizona Revised Statutes section 44-1401 et seq.

107. Plaintiff State of Arkansas repeats and realleges each and every allegation contained in paragraphs 1 through 100.

108. Defendants' acts violate, and Plaintiff State of Arkansas is entitled to relief under, the Arkansas Deceptive Trade Practices Act, A.C.A. § 4-88-101, et seq. and the Arkansas Unfair Practices Act, A.C.A. § 4-75-301 et seq.



109. Plaintiff State of California repeats and realleges each and every allegation contained in paragraphs 1 through 100.

110. Defendants' acts violate, and Plaintiff State of California is entitled to relief under, the Cartwright Act, Business & Professions Code § 16700, et seq., and the California Unfair Competition Act, Bus. & Prof. Code § 17200, et seq.

111. Plaintiff State of Colorado repeats and realleges each and every allegation contained in paragraphs 1 through 100.

112. Defendants' acts violate, and Plaintiff State of Colorado is entitled to relief under, the Colorado Antitrust Act of 1992, § 6-4-101, et seq., Colo. Rev. Stat.

113. Plaintiff State of Connecticut repeats and realleges each and every allegation contained in paragraphs 1 through 100.

114. Defendants' acts violate, and Plaintiff State of Connecticut is entitled to relief under, the Connecticut Antitrust Act, § 35-24, et seq. of the General Statutes of Connecticut.

115. Plaintiff State of Delaware repeats and realleges each and every allegation contained in paragraphs 1 through 100.

116. Defendants' acts violate, and Plaintiff State of Delaware is entitled to relief under, the Delaware Antitrust Act, 6 Del.C. § 2101, et seq.

117. Plaintiff District of Columbia repeats and realleges each and every allegation contained in paragraphs 1 through 100.

118. Defendants' acts violate, and Plaintiff District of Columbia is entitled to relief under, D.C. Official Code § 28-4502, et seq. (2001).

119. Plaintiff State of Florida repeats and realleges each and every allegation contained in paragraphs 1 through 100.

120. Defendants' acts violate, and Plaintiff State of Florida is entitled to relief under, the Florida Antitrust Act of 1980, § 542.15 Florida Statutes, et seq., and the Florida Deceptive and Unfair Trade Practices Act, § 501.201 Florida Statutes, et seq.

121. Plaintiff State of Georgia repeats and realleges each and every allegation contained in paragraphs 1 through 100.

122. Defendants' acts violate, and Plaintiff State of Georgia is entitled to relief under, Official Code of Georgia Annotated (OCGA) § 13-8-2 and Ga. Const. Art. III, Sec. VI, para. 5 (1983).

123. Plaintiff State of Hawaii repeats and realleges each and every allegation contained in paragraphs 1 through 100.

124. Defendants' acts violate, and Plaintiff State of Hawaii is entitled to relief under, Hawaii's Monopolies and Restraint of Trade Law, Section 480-1, et seq., Hawaii Revised Statutes.

125. Plaintiff State of Idaho repeats and realleges each and every allegation contained in paragraphs 1 through 100.

126. Defendants' acts violate, and Plaintiff State of Idaho is entitled to relief under, the Idaho Competition Act, Idaho Code § 48-101 et seq.

127. Plaintiff State of Illinois repeats and realleges each and every allegation contained in paragraphs 1 through 100.

128. Defendants' acts violate, and Plaintiff State of Illinois is entitled to relief under, the Illinois Antitrust Act, 740 ILCS 10/1, et seq.

129. Plaintiff State of Indiana repeats and realleges each and every allegation contained in paragraphs 1 through 100.

130. Defendants' acts violate, and Plaintiff State of Indiana is entitled to relief under, Indiana's Antitrust law, Ind. Code § 24-1-1-1, et seq., and the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1, et seq.

131. Plaintiff State of Iowa repeats and realleges each and every allegation contained in paragraphs 1 through 100.

132. Defendants' acts violate, and Plaintiff State of Iowa is entitled to relief under, the laws of the State of Iowa, alleging violations of the Iowa Competition Act, Iowa Code sections 553 et seq., and the Iowa Consumer Fraud Act, Iowa Code section 714.16.

133. Plaintiff Commonwealth of Kentucky repeats and realleges each and every allegation contained in paragraphs 1 to 100.

134. Defendant's acts violate, and Plaintiff Commonwealth of Kentucky is entitled to relief under, the Kentucky Antitrust Law, KRS 367.175.

135. Plaintiff State of Louisiana repeats and realleges each and every allegation contained in paragraphs 1 through 100.

136. Defendants' acts violate, and Plaintiff State of Louisiana is entitled to relief under, the Louisiana Antitrust Act, La. R.S. 51: 122, et seq., and La. R.S. 51:1401, et seq.

137. Plaintiff State of Maine repeats and realleges each and every allegation contained in paragraphs 1 through 100.

138. Defendants' acts violate, and Plaintiff State of Maine is entitled to relief under, Maine's Monopolies and Profiteering law, Title 10, Maine Revised Statutes, §§ 1101 and 1104.

139. Plaintiff State of Maryland repeats and realleges each and every allegation contained in paragraphs 1 through 100.

140. Defendants' acts violate, and Plaintiff State of Maryland is entitled to relief under, the Maryland Antitrust Act, Md. Com. Law Code Ann. § 11-201, et seq.

141. Plaintiff Commonwealth of Massachusetts repeats and realleges each and every allegation contained in paragraphs 1 through 100.

142. Defendants' acts violate, and Plaintiff Commonwealth of Massachusetts is entitled to relief under, the Consumer Protection and Antitrust Acts, G.L. c.93A § 2, et seq., and G.L. c.93 § 4, et seq., respectively.

143. Plaintiff State of Michigan repeats and realleges each and every allegation contained in paragraphs 1 through 100.

144. Defendants' acts violate, and Plaintiff State of Michigan is entitled to relief under, the Michigan Antitrust Reform Act, Mich. Comp. Laws Ann. § 445.771, et seq., the Michigan Consumer Protection Act, Mich. Comp. Laws Ann. § 445.901, et seq., and the common law of Michigan.

145. Plaintiff State of Mississippi repeats and realleges each and every allegation contained in paragraphs 1 through 100.

146. Defendants' acts violate, and Plaintiff State of Mississippi is entitled to relief under, its Consumer Protection Act found at Miss. Code Ann. § 75-24-1, et seq. (1972, as amended) and its Antitrust Act found at Miss. Code Ann. § 75-21-1, et seq. (1972, as amended).

147. Plaintiff State of Montana repeats and realleges each and every allegation contained in paragraphs 1 through 100.

148. Defendants' acts violate, and Plaintiff State of Montana is entitled to relief under, M.C.A. 30-14-101, et seq.

149. Plaintiff State of Nebraska repeats and realleges each and every allegation contained in paragraphs 1 through 100.

150. Defendants' acts violate, and Plaintiff State of Nebraska is entitled to relief under, the Nebraska Consumer Protection Act, Neb. Rev. Stat. §§ 59-1601, et seq., the Nebraska Unlawful Restraint on Trade Act, Neb. Rev. Stat. §§ 59-801, et seq., and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. §§ 87-301, et seq.

151. Plaintiff State of Nevada repeats and realleges each and every allegation contained in paragraphs 1 through 100.

152. Defendants' acts violate, and Plaintiff State of Nevada is entitled to relief under, Chapter 598A of the Nevada Revised Statutes.

153. Plaintiff State of New Hampshire repeats and realleges each and every allegation contained in paragraphs 1 through 100.

154. Defendants' acts violate, and Plaintiff State of New Hampshire is entitled to relief under, the NH Combinations and Monopolies Act, NH RSA 356, et seq.

155. Plaintiff State of New Jersey repeats and realleges each and every allegation contained in paragraphs 1 through 100.

156. Defendants' acts violate, and Plaintiff State of New Jersey is entitled to relief under, the New Jersey Antitrust Act, N.J.S.A. 56:9-1, et seq.

157. Plaintiff State of New Mexico repeats and realleges each and every allegation contained in paragraphs 1 through 100.

158. Defendants' acts violate, and Plaintiff State of New Mexico is entitled to relief under, the New Mexico Antitrust Act, Sec. 57-1-1, et seq., N.M.S.A. 1978.

159. Plaintiff State of New York repeats and realleges each and every allegation contained in paragraphs 1 through 100.

160. Defendants' acts violate, and Plaintiff State of New York is entitled to relief under, N.Y. Gen. Bus. Law §§ 340, 342, and 342-a.

161. Plaintiff State of North Dakota repeats and realleges each and every allegation contained in paragraphs 1 through 100.

162. Defendants' acts violate, and Plaintiff State of North Dakota is entitled to relief under, the Uniform State Antitrust Act, N.D. Cent. Code § 51-08.1-01, et seq.

163. Plaintiff Commonwealth of the Northern Mariana Islands repeats and realleges each and every allegation contained in paragraphs 1 through 100.

164. Defendants' acts violate, and Plaintiff Commonwealth of the Northern Mariana Islands is entitled to relief under, the Unfair Business Practices Act, 4 C.M.C. 5201 et seq.

165. Plaintiff State of Ohio repeats and realleges each and every allegation contained in paragraphs 1 through 100.

166. Defendants' acts violate, and Plaintiff State of Ohio is entitled to relief under, Ohio's Antitrust Law, Ohio Revised Code, § 109.81 and 1331.01, et seq.

167. Plaintiff State of Oklahoma repeats and realleges each and every allegation contained in paragraphs 1 through 100.

168. Defendants' acts violate, and Plaintiff State of Oklahoma is entitled to relief under, The Oklahoma Antitrust Reform Act, 79 O.S. 2001 §201, et seq.

169. Plaintiff State of Oregon repeats and realleges each and every allegation contained in paragraphs 1 through 100.

170. Defendants' act violate, and Plaintiff State of Oregon is entitled to relief under, the Oregon Antitrust Act, ORS 646.705, et seq.

171. Plaintiff Commonwealth of Pennsylvania repeats and realleges each and every allegation contained in paragraphs 1 through 100.

172. Defendants' acts violate, and Plaintiff Commonwealth of Pennsylvania is entitled to relief under, Pennsylvania common law doctrines against restraint of trade and unjust enrichment proceeding under 71 Pennsylvania Statutes Annotated § 732-204(c).

173. Plaintiff Commonwealth of Puerto Rico repeats and realleges each and every allegation contained in paragraphs 1 through 100.

174. Defendants' acts violate, and Plaintiff Commonwealth of Puerto Rico is entitled to relief under, Monopolies and Restraint, Act No. 77 as amended, June 25, 1964, 10 laws P.R. Ann. § § 257, et seq.

175. Plaintiff State of Rhode Island repeats and realleges each and every allegation contained in paragraphs 1 through 100.

176. Defendants' acts violate, and Plaintiff State of Rhode Island is entitled to relief under, Rhode Island General Laws Chapter 6-36, entitled the "Rhode Island Antitrust Act."

177. Plaintiff State of South Carolina repeats and realleges each and every allegation contained in paragraphs 1 through 100.

178. Defendants' acts violate, and Plaintiff State of South Carolina is entitled to relief under, the South Carolina Unfair Trade Practices Act, §§ 39-5-10, et seq.

179. Plaintiff State of South Dakota repeats and realleges each and every allegation contained in paragraphs 1 through 100.

180. Defendants' acts violate, and Plaintiff State of South Dakota is entitled to relief under, South Dakota Codified Laws ch. 37-1.

181. Plaintiff State of Tennessee repeats and realleges each and every allegation contained in paragraphs 1 through 100.

182. Defendants' acts violate, and Plaintiff State of Tennessee is entitled to relief under, the Tennessee Antitrust Act, Tenn. Code Ann. §§ 47-25-101, et seq.

183. Plaintiff State of Texas repeats and realleges each and every allegation contained in paragraphs 1 through 100.

184. Defendants' acts violate, and Plaintiff State of Texas is entitled to relief under, the Texas Free Enterprise and Antitrust Act of 1983, Tex. Bus. & Com. Code § 15.01, et seq.

185. Plaintiff Territory of the United States Virgin Islands repeats and realleges each and every allegation contained in paragraphs 1 through 100.

186. Defendants' acts violate, and Plaintiff Territory of the United States Virgin Islands is entitled to relief under, Virgin Islands Code 11 V.I.C. §§1503 & 1507.

187. Plaintiff State of Utah repeats and realleges each and every allegation contained in paragraphs 1 through 100.

188. Defendants' acts violate, and Plaintiff State of Utah is entitled to relief under, the Utah Antitrust Act, Sections 76-10-911 through 76-10-925, Utah Code Annotated, as amended.

189. Plaintiff State of Vermont repeats and realleges each and every allegation contained in paragraphs 1 through 100.

190. Defendants' acts violate, and Plaintiff State of Vermont is entitled to relief under, the Vermont Consumer Fraud Act, 9 V.S.A. Section 2451, et seq.



191. Plaintiff Commonwealth of Virginia repeats and realleges each and every allegation contained in paragraphs 1 through 100.

192. Defendants' acts violate, and Plaintiff Commonwealth of Virginia is entitled to relief under, the Virginia Antitrust Act, Va. Code Ann. Section 59.1-9.5

193. Plaintiff State of Washington repeats and realleges each and every allegation contained in paragraphs 1 through 100.

194. Defendants' acts violate, and Plaintiff State of Washington is entitled to relief under, the Unfair Business Practices-Consumer Protection Act, Wash. Rev. Code 19.86.

195. Plaintiff State of West Virginia repeats and realleges each and every allegation contained in paragraphs 1 through 100.

196. Defendants' acts violate, and Plaintiff State of West Virginia is entitled to relief under, the West Virginia Antitrust Act, W.Va. Code §§ 47-18-1, et seq.

197. Plaintiff State of Wisconsin repeats and realleges each and every allegation contained in paragraphs 1 through 100.

198. Defendants' acts violate, and Plaintiff State of Wisconsin is entitled to relief under, the Wisconsin antitrust statute, Wis. Stat. §§ 133.01, et seq.

199. Plaintiff State of Wyoming repeats and realleges each and every allegation contained in paragraphs 1 through 100.

200. Defendants' acts violate, and Plaintiff State of Wyoming is entitled to relief under, Wyo. Stat. §§ 40-4-101 to 123.

#### **REQUEST FOR RELIEF**

Accordingly, the Plaintiff States request that this Court:

1. Adjudge and decree that Defendants engaged in conduct in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

2. Adjudge and decree that Defendants engaged in conduct in violation of each of the state statutes and common law enumerated in this Complaint;

3. Enjoin and restrain, pursuant to federal and state law, Defendants, their affiliates, assignees, subsidiaries, successors and transferees, and their officers, directors, partners, agents and employees, and all other persons acting or claiming to act on their behalf or in concert with them, from engaging in any conduct and from adopting any practice, plan, program or device having a similar purpose or effect to the anticompetitive actions set forth above;

4. Award to Plaintiff States any other equitable relief as the Court finds appropriate to redress Defendants' violations of state law;

5. Award to each Plaintiff State the maximum civil penalties allowed by law;

6. Award to each Plaintiff State its costs, including reasonable attorneys' fees; and

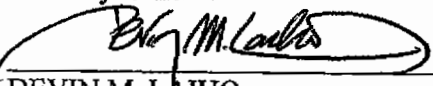
7. Order any other relief that this Court deems proper.

DATED: August 17, 2004


Respectfully submitted,

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